

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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International Association of Firefighters,	:	
Derry, New Hampshire, Local 2620	:	
	:	
v.	:	CASE NO. <u>P-0113:1</u>
	:	
Board of Fire Commissioners	:	DECISION NO. <u>79014</u>
Derry, New Hampshire	:	
	:	

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APPEARANCES

Representing the Derry Firefighters Association:

Martin Pierce, Vice President, IAFF  
Gary Raymond, President, Derry Firefighters Association

Representing the Derry Board of Fire Commissioners:

James Sayer, Esquire, Counsel  
James Cote, Fire Chief

BACKGROUND

The Derry Firefighters Association is the certified bargaining representative of firefighters in the town of Derry, New Hampshire. At the commencement of negotiations for a contract, beginning in the fall of 1978, the Association representatives met with representatives of the Fire Department, including Chief James Cote and the Fire Commissioners and Deputy Chief of the Fire Department. After an initial attempt to formulate ground rules for negotiations, a final list of 13 ground rules was agreed upon and signed by the parties. Among the guidelines was number 12 which reads "the representatives for the department for the purpose of negotiations will be designated as Chief Cote, in his absence Commissioner Donald Chase, Commissioner Madden, Commissioner Boyle and Deputy Chief Crabb."

Negotiations were held on various dates from October 16, 1978 through April 16, 1979 on a total of 12 dates.

On April 16, 1979, the parties met to negotiate the contract and, when it was noted that Chief Cote was absent, Commissioner Donald Chase requested that Deputy Chief Crabb be the chief spokesman for management. Gary Raymond, President of the Local and head negotiator for the union objected to this procedure stating that according to the ground rules Commissioner Chase had to be the spokesman in the absence of Chief Cote. When agreement could not be reached on the spokesman, the meeting broke up, Commissioner Chase stating that the matter would be taken "to the Labor Board" if necessary before further negotiations could take place. When Gary Raymond persisted

in his position, he was asked to leave and when he refused to leave he was told that he was no longer speaking as a negotiator but was now "Private Raymond" and unless he left he would be reprimanded. Two days later a letter of reprimand was placed in his file for his conduct at the negotiating session. Evidence at the hearing indicated that his only purpose for being present on April 16, 1979 was as a negotiator and it was not a normal duty date for him as a firefighter.

As a result of these actions, the Local brought a complaint of unfair labor practice against the Derry Fire Department and Board of Fire Commissioners stating a failure to negotiate in good faith by attempting to change ground rules after they were agreed upon and by attempting to coerce a member of the union engaged in negotiations by reprimanding him for activities carried on in negotiations.

A hearing was held by the Board at its offices on June 19, 1979.

FINDINGS OF FACT  
AND RULINGS OF LAW

The Public Employee Labor Relations Board has reviewed all of the evidence submitted by both parties at the hearing and has listened to a tape of the negotiating session of April 16. It is clear to the Board that both parties to this dispute have ignored or, by practice, changed the ground rules agreed upon for negotiations. For example, the dates of meetings provision found in ground rule 2 has been changed by practice so that meetings are set at one session for the next session rather than by strict compliance with ground rule 2.

In addition, both parties have spoken to the press, whether or not as a result of inquiries by the press and that could be deemed a violation of ground rule 5.

The Board finds that ground rule 12 is ambiguous in that it does not state that in the absence of Chief Cote the Chief negotiator/spokesman for management will be Commissioner Chase, then Commissioner Madden, then Commissioner Boyle and then Deputy Chief Crabb. Indeed, due to the ambiguity and the apparent disagreement as to intent, the Board will not state that the union can determine who the Chief Negotiator for management will be and will read the ground rule to state that management could pick its substitute negotiator/spokesman in the absence of the fire chief.

The Board, noting the course of negotiations, will not uphold the unfair labor practice complaint of the union regarding the alleged change in ground rules since both parties participated in this process. The Board will not find an unfair labor practice due to the break off in negotiations since neither party attempted to resume negotiations after April 16th although each party had a continuing duty to seek those negotiations. Therefore, both parties are at fault and neither will be found more guilty than the other for the failure of negotiations.

On the matter of the reprimand given negotiator Raymond, the Board notes that his sole purpose for being at the Fire Station on the evening of April 16

was to attend negotiations. This was not a regular duty day for Mr. Raymond and he indeed participated in negotiations. The Board recognizes that negotiations are often heated and parties' positions adamant. Mr. Raymond was not at the station as an employee and, therefore, the reprimand given him was inappropriate. The Board, therefore, finds that said reprimand shall be removed from his record and shall not be used in any way to affect his employment in the future.

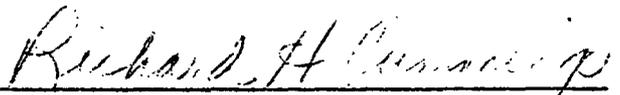
The Board notes from the evidence presented at the hearing on June 19, 1979 that the parties would best be served by the presence in negotiations on both sides of professionals to negotiate, whether counsel, paid professionals or union officials. The Board commends to the parties a change in their ground rules to permit negotiations by professionals so that these negotiations might move away from the petty and foolish character which have characterized them in the past.

ORDER

The Board issues the following order:

1. The unfair labor practice complaint brought by the Derry Firefighters Association concerning a change in ground rules on the break-off of negotiations is found to be unsubstantiated for the reasons given above and is, therefore, denied.
2. The Derry Fire Commissioners and Fire Department Personnel are ordered to remove the reprimand from the file of Gary Raymond and to make no use of the alleged disciplinary action against him at any time in the future.
3. The parties are ordered to resume negotiations upon receipt of the order and report to the Board progress of those negotiations within 30 days.

Signed this 22nd day of June



RICHARD H. CUMMINGS, ACTING CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Board members Joseph Moriarty, James Anderson and David Mayhew present and voting. Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.